

§ 268.21 Down-selection of one or more Maglev projects for further study and selection of one project for final design, engineering, and construction funding.

(a) Upon completion of Phase III of the Maglev Deployment Program, FRA will down-select one or more projects to complete additional environmental studies, investment grade revenue forecasts, and other studies and analyses necessary prior to initiation of construction. Final design and engineering work will also be initiated for the down-selected project(s). To be down-selected a project must appear to meet the project eligibility standards contained in § 268.11 (b), rate highly in the project selection criteria specified in § 268.17, be judged by FRA to have a good chance of being constructed with the Federal funds authorized for this program, and be successfully operated by a public/private partnership.

(b) Only one project will be selected in Phase IV of the Maglev Deployment Program and be eligible for any Federal construction funds that Congress chooses to make available. That one project must meet each and every project eligibility standard contained in § 268.11 (b). If more than one project down-selected in Phase III and funded through Phase IV meets all of these standards, then FRA will evaluate and compare the eligible projects according to the set of project selection criteria contained in § 268.17.

(c) In reviewing competing projects under the project eligibility standards and project selection criteria, the FRA will exercise particular vigilance regarding the following elements of the preconstruction planning process, although not to the exclusion of others:

- (1) The credibility of the demand and revenue forecasts, cost estimates, and benefit/cost comparisons; and
- (2) The credibility of the financial plan.

(d) FRA intends to make periodic reviews of the processes and products of grant recipients. Such reviews may include, at the FRA's option, reviews at key milestones in the preparation of project descriptions.

PART 269—ALTERNATE PASSENGER RAIL SERVICE PILOT PROGRAM

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AUTHORITY: Sec. 214, Div. B, Pub. L. 110-432; 49 U.S.C. 24711; and 49 CFR 1.49.

SOURCE: 76 FR 77724, Dec. 14, 2011, unless otherwise noted.

§ 269.1 Purpose.

The purpose of this part is to carry out the statutory mandate set forth in 49 U.S.C. 24711 requiring FRA to develop a pilot program that permits a railroad that owns infrastructure over which Amtrak operates a passenger rail service route to petition FRA to be considered as a passenger rail service provider over that route in lieu of Amtrak.

§ 269.3 Application.

(a) *Certification.* This part will not be applicable to any railroad, unless and until, the Secretary certifies that FRA has sufficient resources that are adequate to undertake the pilot program developed by this part. FRA will provide notice of the certification on the FRA public Web site upon receipt.

(b) *Route limitations.* The pilot program developed by this part will not be made available to more than two Amtrak intercity passenger rail routes.

(c) *Time limitations.* Any railroad awarded a contract to provide passenger rail service under the pilot program developed by this part shall only provide such service for a period not to exceed either five years after October 16, 2008, or a later date authorized by statute.

§ 269.5 Definitions.

As used in this part—

Act means the Passenger Rail Investment and Improvement Act of 2008 (Pub. L. 110-432, Division B (Oct. 16, 2008)).

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Administrator means the Federal Railroad Administrator, or the Federal Railroad Administrator's delegate.

Amtrak means the National Railroad Passenger Corporation.

File and Filed mean submission of a document under this part on the date the document was postmarked, or the date the document was emailed to FRA.

Financial plan means a plan that contains, for each Federal fiscal year fully or partially covered by the bid: An annual projection of the revenues, expenses, capital expenditure requirements, and cash flows (from operating activities, investing activities, and financing activities, showing sources and uses of funds) attributable to the route; and a statement of the assumptions underlying the financial plan's contents.

FRA means the Federal Railroad Administration.

Operating plan means a plan that contains, for each Federal fiscal year fully or partially covered by the bid: A complete description of the service planned to be offered, including the train schedules, frequencies, equipment consists, fare structures, and such amenities as sleeping cars and food service provisions; station locations; hours of operation; provisions for accommodating the traveling public, including proposed arrangements for stations shared with other routes; expected ridership; passenger-miles; revenues by class of service between each city-pair proposed to be served; and a statement of the assumptions underlying the operating plan's contents.

Passenger rail service route means those routes described in 49 U.S.C. 24102(5)(B), (C), and (D) or in 49 U.S.C. 24702.

Petitioner means a railroad, other than Amtrak, that has submitted a petition to FRA under section 269.7 of this part.

Railroad means a rail carrier or rail carriers, as defined in 49 U.S.C. 10102(5).

Secretary means the Secretary of the U.S. Department of Transportation.

§ 269.7 Petitions.

(a) *In General.* A railroad that owns infrastructure over which Amtrak operates a passenger rail service route may petition FRA to be considered as a

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passenger rail service provider over that route in lieu of Amtrak for a period of time consistent with the time limitations described in § 269.3(c) of this part.

(b) *Petition Requirements.* Each petition shall:

(1) Be filed with FRA no later than 45 days after FRA provides notice of the Secretary's certification pursuant to § 269.3(a) of this part using the following method: email to Prria214@dot.gov;

(2) Describe the petition as a "Petition to Provide Passenger Rail Service under 49 CFR part 269"; and

(3) Describe the route or routes over which the petitioner wants to provide passenger rail service and the Amtrak service that the petitioner wants to replace.

(c) *Future petitions.* In the event that a statute extends the time period under which a railroad may provide passenger rail service pursuant to the pilot program developed by this part, petitions under this section shall be filed with FRA no later than 60 days after the later of the enactment of such statutory authority or the Secretary's issuance of the certification under § 269.3(a), and shall otherwise comply with the requirements of this part.

§ 269.9 Bid process.

(a) *Amtrak notification.* FRA will notify Amtrak of any eligible petition filed with FRA no later than 30 days after FRA's receipt of such petition.

(b) *Bid requirements.* A petitioner and Amtrak must both file a bid with FRA to provide passenger rail service over the route to which the petition relates no later than 60 days after the petition deadline established by § 269.7 of this part using the following method: email to Prria214@dot.gov. Each such bid must:

(1) Provide FRA with sufficient information to evaluate the level of service described in the proposal, and to evaluate the proposal's compliance with the requirements described in § 269.13(b) of this part;

(2) Describe how the bidder would operate the route. This description must include, but is not limited to, an operating plan, a financial plan and, if applicable, any agreement(s) necessary

for the operation of passenger service over right-of-way on the route that is not owned by the railroad. In addition, if the bidder intends to generate any revenues from ancillary activities (*i.e.*, activities other than passenger transportation, accommodations, and food service) as part of its proposed operation of the route, then the bidder must fully describe such ancillary activities and identify their incremental impact in all relevant sections of the operating plan and the financial plan, and on the route's performance under the financial and performance metrics developed pursuant to section 207 of the Act, together with the assumptions underlying the estimates of such incremental impacts;

(3) Describe what Amtrak passenger equipment would be needed, if any;

(4) Describe in detail, including amounts, timing, and intended purpose, what sources of Federal and non-Federal funding the bidder would use, including but not limited to any Federal or State operating subsidy and any other Federal or State payments;

(5) Contain a staffing plan describing the number of employees needed to operate the service, the job assignments and requirements, and the terms of work for prospective and current employees of the bidder for the service outlined in the bid; and

(6) Describe how the passenger rail service would comply with the financial and performance metrics developed pursuant to section 207 of the Act. At a minimum, this description must include, for each Federal fiscal year fully or partially covered by the bid: a projection of the route's expected on-time performance and train delays according to the metrics developed pursuant to section 207 of the Act; and the net cash used in operating activities per passenger-mile (both before and after the application of any expected public subsidies) attributable to the route.

(c) *Supplemental information.* FRA may request supplemental information from a petitioner and/or Amtrak where FRA determines such information is needed to evaluate a bid. In such a request, FRA will establish a deadline by which the supplemental information must be filed with FRA.

§ 269.11 Evaluation.

FRA will select a winning bidder by evaluating the bids against the financial and performance metrics developed under section 207 of the Act and the requirements of this part, and will give preference in awarding contracts to bidders seeking to operate routes that have been identified as one of the five worst performing Amtrak routes under 49 U.S.C. 24710.

§ 269.13 Award.

(a) *Award.* FRA will execute a contract with the winning bidder(s), consistent with the requirements of this section and as FRA may otherwise require, no later than 90 days after the bid deadline established by § 269.9(b) of this part. FRA will provide timely notice of these selections to all petitioners and Amtrak.

(b) *Contract requirements.* Among other things, the contract between FRA and a winning bidder shall:

(1) Award to the winning bidder the right and obligation to provide passenger rail service over that route subject to such performance standards as FRA may require, consistent with the standards developed under section 207 of the Act, for a duration consistent with § 269.3(c) of this part;

(2) Award to the winning bidder an operating subsidy for the first year at a level not in excess of the level in effect during the fiscal year preceding the fiscal year in which the petition was received, adjusted for inflation, and for any subsequent years at such level, adjusted for inflation;

(3) Condition the operating and subsidy rights upon the winning bidder continuing to provide passenger rail service on the route that is no less frequent, nor over a shorter distance, than Amtrak provided on that route before the award;

(4) Condition the operating and subsidy rights upon the winning bidder's compliance with the minimum standards established under section 207 of the Act and such additional performance standards as FRA may establish; and

(5) Subject the winning bidder to the grant conditions established by 49 U.S.C. 24405.

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(c) *Staffing Plan Publication.* The winning bidder shall make their staffing plan required by § 269.9(b)(4) of this part available to the public after the bid award.

§ 269.15 Access to facilities; employees.

(a) *Access to facilities.* If the award under § 269.13 of this part is made to a railroad other than Amtrak, Amtrak must provide access to its reservation system, stations, and facilities directly related to operations to the winning bidder awarded a contract under this part, in accordance with section 217 of the Act, necessary to carry out the purposes of this part.

(b) *Employees.* The employees of any person used by a railroad in the operation of a route under this part shall be considered an employee of that railroad and subject to the applicable Federal laws and regulations governing similar crafts or classes of employees of Amtrak, including provisions under section 121 of the Amtrak Reform and Accountability Act of 1997 relating to employees who provide food and beverage service.

(c) *Hiring preference.* The winning bidder shall provide hiring preference to qualified Amtrak employees displaced by the award of the bid, consistent with the staffing plan submitted by the winning bidder.

§ 269.17 Cessation of service.

If a railroad awarded a route under this part ceases to operate the service or fails to fulfill its obligations under the contract required under § 269.13 of this part, the Administrator, in collaboration with the Surface Transportation Board, shall take any necessary action consistent with title 49 of the United States Code to enforce the contract and ensure the continued provision of service, including the installment of an interim service provider and re-bidding the contract to operate the service. The entity providing service shall either be Amtrak or a railroad eligible for this pilot program under § 269.7 of this part.

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PART 272—CRITICAL INCIDENT STRESS PLANS

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APPENDIX A TO PART 272—SCHEDULE OF CIVIL PENALTIES

AUTHORITY: 49 U.S.C. 20103, 20107, 20109, note; 28 U.S.C. 2461, note; 49 CFR 1.89; and sec. 410, Div. A, Pub. L. 110–432, 122 Stat. 4888.

SOURCE: 79 FR 16233, Mar. 25, 2014, unless otherwise noted.

Subpart A—General

§ 272.1 Purpose.

(a) The purpose of this part is to promote the safety of railroad operations and the health and safety of railroad employees, especially those who are directly involved in a critical incident by requiring that the employing railroad offers and provides appropriate support services, including appropriate relief, to the directly-involved employees following that critical incident.

(b) Nothing in this part constrains a railroad from implementing a critical incident stress plan that contains additional provisions beyond those specified in this part (including provisions covering additional incidents or persons), provided that such additional provisions are not inconsistent with this part.

§ 272.3 Application.

This part applies to each

- (a) Class I railroad, including the National Railroad Passenger Corporation;
- (b) Intercity passenger railroad; or
- (c) Commuter railroad.